

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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SANSALVADOR BLOOMFIELD,

Plaintiff,

-against-

ORDER

CV 05-5100 (LDW)(ARL)

TOWN OF HEMPSTEAD, et al.,

Defendants.

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LINDSAY, Magistrate Judge:

Before the court is the November 2, 2006 letter application of the defendant, Thomas Dauscher, seeking to strike the complaint or preclude the plaintiff from testifying based on the plaintiff's failure to appear for a deposition. In the alternative, the defendant seeks to compel the plaintiff to appear for a deposition on a date certain. The plaintiff opposes the application by letter also dated November 2, 2006. For the reasons set forth below, the plaintiff is directed to appear for a deposition the week of November 20, 2006, on a day convenient to the defendant.

By way of background, in early March the parties agreed to the entry of a scheduling order, which established September 18, 2006 as the deadline for all discovery. Six days before the close of discovery, the parties then requested a additional sixty days to complete discovery. The parties based their request, in large part, on the fact that the plaintiff had not appeared for a deposition because he had moved out of town. The court granted the request, but warned the parties that no further adjournments would be granted as Judge Wexler expected the case to be marked ready for trial in the fall.

Despite the sixty day extension, the plaintiff has not appeared for his deposition. The only explanation offered for the plaintiff's failure to appear is that his counsel could not reach him for a brief period of time because of complications in his move. Counsel for the plaintiff assures the court, however, that the plaintiff will make himself available either the final two weeks of November or in the first week of December. Accordingly, the defendant's motion to strike the complaint or preclude the plaintiff from testifying is denied. The deadline for discovery will be extended for the limited purpose of taking the plaintiff's deposition the week of November 20, 2006. Any party planning on making a dispositive motion shall take the first step in the motion process by December 6, 2006. The final conference will go forward as scheduled on December 7, 2006.

Dated: Central Islip, New York
November 3, 2006

SO ORDERED:

_____/s/_____
ARLENE R. LINDSAY
United States Magistrate Judge